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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,935	12/09/2003	Mariana Tajada	14552.0001US01	6657
23552	7590	04/21/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/731,935	TAJADA, MARIANA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Deborah K. Ware	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 06 February 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,4,5 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) 5,12 and 17-22 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4,13-16,23 and 24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1, 4-5, and 12-24 are presented for reconsideration on the merits.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 18, 2006 has been entered.

#### ***Foreign Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Response to Amendment***

The amendment and remarks filed January 18, 2006, has been received and entered. Also the amendment filed February 6, 2006, has been received and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Election/Restrictions***

Claims 5, 12 and 17-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement

in the reply filed on November 8, 2004. It is noted that Applicants have presently also withdrawn these claims pending rejoinder. Claim 11 was canceled. Claims 17-22 are newly added and have been withdrawn as indicated above.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 13, 15-16, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 13, 15 recite "The medium" and "the medium" and it appears that the term "the medium" may lack antecedent basis because in other instances of the claims "the culture medium" is used to refer back to "A culture medium" as recited in claim 1. Use of consistent terms is suggested in all of the claims. Also claim 15 depends from itself and dependency should be change to -14—in claim 15 only. Further, claim 24 recites "the culture plate" which lacks antecedent basis. Dependency of claim 24 should be changed from "claim 1" to —claim 23—. Claim 16 will be remedied by the correction of claim dependency in claim 15.

***Claim Rejections - 35 USC § 103***

Claims 1, 4, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP360196185A in view of Gottlieb et al (US Patent No. 3,188,272), newly cited Chun et al (US 5089394) and newly cited Liao et al (US 5437997), the newly cited references cited on enclosed PTO-892 Form.

Claims are drawn to culture medium comprising various amounts of monobasic potassium phosphate, ammonium chloride, heptahydrate magnesium sulfate, saccharose and water for culturing yeast or fungi. Further the yeast may be selected from *Saccharomyces cerevisiae*. The pH can range from 4.5 to 5.5 and culture medium is contained in a culture plate which can comprise an absorbent surface.

JP Patent teaches culturing *Saccharomyces cerevisiae* in a culture medium which comprises ammonium chloride, magnesium sulfate, and saccharose, see the abstract.

Gottileb teaches culture medium comprising monobasic potassium phosphate and water for detecting yeast (*Saccharomyces*). Note column 9, lines 6 and 12. The culture medium is contained in a culture plate, note column 2, line 20. The pH can be between 2.3 and 10.4, note column 5, line 30.

Chun et al teach a detection system wherein an absorbent surface is disclosed to be comprised by a culture container, note bridging columns 3-4, lines 65-68 and 1-10, respectively.

Liao et al teach a culture medium comprising monobasic potassium phosphate in an amount of about 4.5 g/l, column 11, lines 37-41 and line 56 and heptahydrate magnesium phosphate at column 12, line 16. Also at column 10, lines 29-40, a comparable carbohydrate source is disclosed in an amount of about 40 g/l. Further, at column 11, lines 18-19, line 59 and line 62, nitrogen and sulfate sources, respectively, are disclosed to be only effective at least about 1.5 g/l.

The claims differ from JP Patent abstract in that monobasic potassium phosphate and heptahydrate magnesium sulfate are not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of JP Patent, Gottileb, newly cited Chun et al, and newly cited Liao et al in order to provide for a culture medium comprising monobasic potassium phosphate, ammonium chloride, magnesium sulfate, saccharose and water for culturing yeast since all of the ingredients for the culturing and testing are disclosed by the cited prior art. One of skill in the art would have been motivated to combine these disclosed ingredients together in a culture medium because they are taught to be used for culturing yeast. Further, as noted above by Gottileb the pH range of 4.5 and 5.5 is well known to be selected for culture medium fermentations.

Thus, one of skill in the art would have expected successful results by their combination together in a culture medium. Furthermore, Gottileb teach that yeast (i.e. *Saccharomyces cerevisiae*) can be cultured at a pH of 2.3 and 10.4, note column 5, line 30. The culture medium and/or composition thereof would have been expected to be useful for food industry installations because the yeast would have been expected to grow on the culture media so disclosed by the cited prior art and thus, their detection in the installations realized via their growth thereupon the culture medium as disclosed by the cited prior art. Also the selection of the specified amounts in new claim 14 are clearly taught, or at least suggested, by the newly cited reference Liao et al, noted above. To contain the culture medium in a plate is taught and the newly cited Chun et al clearly teach that use of an absorbent surface as being comprised by a culture

container is well known. The claims are rendered *prima facie* obvious over the cited prior art.

### ***Response to Arguments***

Applicant's arguments filed January 18, 2006 and February 6, 2006, have been fully considered but they are not persuasive, with the exception of the one filed February 6, 2006 since it was merely a response to a non-compliant notice of which Applicants are now deemed to have presented claims in compliance with the rules.

The argument that new claims are directed to a minimal media is noted, however, new art has been set forth for which to meet these additional ingredients added to make up the alleged minimal media, however, the claims do not recite "minimal media" but the ingredients make up this media of which Applicants' alleges criticality, therefore.

The newly prior art rejection set forth above is a different combination of cited prior art. Each of the cited references teach a culture medium for culturing a microorganism of which at least two are culturing yeasts. This is the very same microorganism required by the claimed medium and one of skill would have been motivated by one of skill in the art to select for these ingredients to formulate a culture medium for culturing yeasts.

In addition, Applicant's claims do not necessarily require any particular type of microorganism or any microorganism, for that matter, to be in the culture medium per se. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The cited prior art combination against the claims clearly teach that these ingredients have been included in the culture medium for yeast. Therefore, in the absence of persuasive evidence to the contrary the claims are deemed *prima facie* obvious over the cited prior art of record.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited of record on the PTO-892 Form previously mailed to Applicant as well as to the newly applied art cited on enclosed PTO-892 Form. Therefore, the claims are properly rejected.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Deborah K. Ware*  
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Deborah K. Ware  
April 13, 2006